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EXAMINER

SCUDERI, PHILIP S

ART UNIT	PAPER NUMBER
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2153

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09/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/036,849	Applicant(s) ECKERT ET AL.	
	Examiner Philip S. Scuderi	Art Unit 2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-11,13,14,16-22 and 25-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-11,13,14,16-22 and 25-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

I. 35 U.S.C. § 101

Applicant's arguments filed 6/29/2007 (herein "Remarks") in regards to the §101 rejections have been fully considered but they are not persuasive.

Claims 1, 4-11, 13, 14, 16-21, and 25-27 were rejected under §101 as being directed to functional descriptive material claimed as descriptive material *per se* (see Office Action mailed 3/23/2007 at 2). Applicant argues that these claims are statutory because they have been amended to recite a "server" instead of a "message broker" (see Remarks at 10; Amendments filed 6/29/2007). The examiner disagrees.

The specification does not necessarily limit the claimed "server" to a hardware embodiment. The specification states that a "server" can be, for example, "a Web server with a multi-threaded servlet engine" (see Spec. at p. 7, ll. 11-12). One of ordinary skill in the art would not necessarily interpret a "Web server" to be hardware. For example, NetUnlimited.com defines a "Web Server" as "the computer program that serves requested HTML pages" (see page 5 printed from NetUnlimited.com). One of ordinary skill in the art would further recognize that "servlets" are software programs implemented in Java.

The claims do not necessarily limit the claimed "server" to a hardware embodiment. For example, claim 1 defines what is required of the claimed "server" where it recites a "server comprising at least one message channel, a first channel adapter and a second channel adapter." As stated in the last office action, these components can reasonably be interpreted to be software and therefore do not make the claim statutory (see Office Action mailed 3/23/2007 at 2).

Claims 1, 4-11, 13, 14, 16-21, and 25-27 were rejected under §101 as lacking a useful, concrete, and tangible result because they are replete with the language “operable to”, which merely limits the claimed systems to being capable of performing the steps that follow this language (see Office Action mailed 3/23/2007 at 3). Applicant argues that these claims are statutory because the phrase “operable to” has been replaced with the phrase “configured to” (see Remarks at 11; Amendments filed 6/29/2007). The examiner disagrees.

The examiner does not see how being “configured” to perform an action is any different than being “operable” to perform the action. The examiner further does not how “configuring” an element to perform an action necessarily implies that the element perform the action.

II. 35 U.S.C. §§ 102(b), 103(a)

Applicant's arguments filed 6/29/2007 (herein “Remarks”) in regards to the §102(b) rejections have been fully considered but they are not persuasive.

Applicant argues that Smith (U.S. Patent No. 5,790,790) does not teach, “receive a message from the first client system ... comprising content information and destination information” as recited by claim 1 because Smith's session managers 102 receive information about intended recipients separately from files to be transmitted (see Remarks at 11-12). The examiner disagrees.

The claim recites:

“the first channel adapter being configured to:
receiving a message from the first client system encoded in an Internet protocol and comprising content information and destination information”

The specification does not define what it means to be “configured to” receive a message. The examiner therefore broadly interprets claimed first channel adapter to be anything capable of

“receiving a message from the first client system encoded in an Internet protocol and comprising content information and destination information.”

Smith discloses a network server (12) that is capable of receiving the claimed message by mere virtue of the fact that it is connected to a network (see, e.g., Smith at fig. 1). Smith's network server (12) can reasonable be interpreted as the claimed “second channel adapter” for similar reasons.

Applicant's argument that Smith's session managers 102 receive information about intended recipients separately from files to be transmitted is noted. The examiner agrees with this analysis of the Smith reference. However, even if the claims were interpreted such that “receiving a message from the first client system encoded in an Internet protocol and comprising content information and destination information” actually needed to be performed, there is no reason that the content information and the destination information cannot be information in separate packets, or even the same information.

The specification provides examples of “messages” such as “an HTTP POST request” or “an HTTP GET request” (see Spec. at 3), but does not define a “message.” It was well known in the art that HTTP GET and/or POST requests could be split among separate packets. For example, Feldmann (BLT: Bi-Layer Tracing of HTTP and TCP/IP, Anja Feldmann) discloses “[i]t is not too uncommon to see each line of an HTTP request or response being transmitted in a single packet” (see Feldmann, 2nd bullet on page 4). Additionally, vpsource.com defines a “Message” as “[i]nformation sent and received that communicates various parts of a transaction” (see page 7 printed from vpsource.com) and makes no mention of a single packet.

Smith “sends transaction details” to the system such as “intended recipients ... [t]hen the upload starts” (see Smith at col. 7, ll. 34-36). Thus, the intended recipients and the files uploaded are

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“various parts of a transaction” and can reasonably be construed as a “message.” Moreover, there is no reason that the “intended recipients” cannot reasonably be construed as “content information” as claimed.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 4-11, 13, 14, 16-21, and 25-27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

These claims are non-statutory because they can reasonably be interpreted as software alone and are therefore directed to functional descriptive material claimed as descriptive material per se. See MPEP § 2106.01. For example, the adapters can be servlets and the server can be a webserver implemented as software. See Specification at 7, 18.

These claims are replete with the phrase “configured to”, which merely limits the methods/systems to being capable of performing the steps that follow. Therefore, these claims are not limited to producing a useful, concrete, and tangible result as required by §101. MPEP § 2106.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 6-11, 13, 14, 16-22, and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (U.S. Patent No. 5,790,790).

As to claims 1, 4, 9-11, 13, 14, 16-21, and 25-27, these claims are replete with the phrase “configured to”, which merely limits the methods/systems to being capable of performing the steps that follow.

For example, claim 1 recites a “first channel adapter” that is “configured to” perform certain steps. This language merely limits the claim to requiring any component that is capable of receiving the claimed message, reading destination information from the message, and sending a push request place the message in a message channel corresponding to the destination information.

Smith discloses a network server (12) that is capable of receiving the claimed message, reading destination information from the message, and sending a push request place the message in a message channel corresponding to the destination information. Smith at column 7, line 28 to column 9, line 9. Smith’s server (12) is therefore a “first channel adapter” as claimed.

All the other claim limitations set forth in claims 1, 4, 9-11, 13, 14, 16-21, and 25-27 are anticipated by Smith using the same rationale.

As to claim 6, Smith teaches an address information store (12) wherein channel information (account information) corresponding to the destination information is stored [column 7, line 28 to column 9, line 9].

As to claim 7, Smith teaches a bi-directional communication link, the message broker comprising two message channels (accounts), each channel comprising a first channel adapter and a second channel adapter [column 7, line 28 to column 9, line 9].

As to claim 8, Smith teaches that the first channel adapter of one of the channels and the second channel adapter of the other of the channels are provided by a common combined channel adapter module (server 12) [column 7, line 28 to column 9, line 9].

As to claim 22, Smith teaches a method of transmitting messages from a first client system to a second client system comprising the steps of

receiving a message (files and transaction information) from the first client system (sender 16) encoded in an Internet protocol format and comprising content information (files) and destination information (recipients) corresponding to a message channel (recipient account in the message store) [column 7, line 28 to column 9, line 9],

reading the destination information (intended recipients) [column 7, line 28 to column 9, line 9],

sending a push request (insert command) to place the content information (files) in a message channel (recipient account in the message store) corresponding to the destination information (recipients) [column 7, line 28 to column 9, line 9],

receiving a message request (recipient's account information) from the second client system (recipient 22) encoded in an Internet protocol format and comprising source information (account) corresponding to the message channel (recipient account in the message store) [column 7, line 28 to column 9, line 9],

reading the message request (recipient's account information) to identify the message channel (recipient account in the message store) corresponding to the source information (account) [column 7, line 28 to column 9, line 9],

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sending a pull request (checking the recipient's account for files or requesting file retrieval) to the message channel (recipient account in the message store) [column 7, line 28 to column 9, line 9],

generating a response (file) comprising at least the content information (file) if a message is placed in the channel (recipient account in the message store) [column 7, line 28 to column 9, line 9].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (U.S. Patent No. 5,790,790).

Smith does not disclose that the server communicates with sender (16) and recipient (22) using a servlet. Nonetheless, servlets were known in the art and had advantages such as providing simple and consistent mechanisms for extending the functionality of a server. It would have been obvious to utilize servlets here for at least the same reasons.

Conclusion

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip S. Scuderi whose telephone number is (571) 272-5865. The examiner can normally be reached on Monday-Friday 9:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton B. Burgess can be reached on (571) 272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Philip S. Scuderi/


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